

**Senate Government Operations Committee 1**

**Amendment No. 1 to SB1217**

**Bell**  
**Signature of Sponsor**

**AMEND Senate Bill No. 1217**

**House Bill No. 326\***

by adding the following language immediately preceding the enacting clause:

WHEREAS, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the Supreme Court of the United States held that members of state regulatory boards comprised of a controlling number of active market participants may be subject to liability under federal antitrust law unless they are acting pursuant to clearly articulated state policy or law and are actively supervised by the state; and

WHEREAS, in accordance with this Supreme Court decision, this bill gives a designated state official authority to review regulatory board actions that may constitute a potentially unreasonable restraint of trade for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the General Assembly with respect to the board; and

WHEREAS, this bill provides for legislative notification and oversight in the event that a state official vetoes a board action; now, therefore,

**AND FURTHER AMEND** by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 4, is amended by adding the following language as a new, appropriately designated section:

(a) As used in this section:

(1) "Regulatory board" means any state board, commission, council, committee, or similar entity or body established by statute or rule that issues any license, certificate, registration, certification, permit, or other similar document for an occupation, profession, business, or trade in this state or otherwise regulates

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or controls any occupation, profession, business, or trade in this state.

"Regulatory board" does not mean any board created by § 23-1-101, § 17-5-201, or the rules of the supreme court; and

(2) "Supervising official" means the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or the commissioner's or officer's designee.

(b) Each supervising official shall ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy, as follows:

(1) With respect to any rule to be promulgated after the effective date of this act by a regulatory board that may constitute a potentially unreasonable restraint of trade so as to require further review, the supervising official shall:

(A) Review any available evidentiary record, such as meeting minutes, public comment, or other justification for rulemaking and, if necessary, direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(B) Conduct a review of the substance of the rule, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(C) In writing:

(i) Approve the rule if the supervising official determines that it is consistent with a clearly articulated state policy or law

established by the general assembly with respect to the regulatory board;

(ii) Remand the rule to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(iii) Veto the rule if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(2) With respect to any action, other than rulemaking, taken by a regulatory board the supervising official shall:

(A) Evaluate whether the action may constitute a potentially unreasonable restraint of trade that requires further review; and

(B) Upon determining that an action requires further review pursuant to subdivision (b)(2)(A):

(i) Provide notice to the regulatory board within ten (10) business days of the date the action was taken that the action is subject to further review;

(ii) Review the full evidentiary record regarding the action and, if necessary, supplement the evidentiary record or direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(iii) Conduct a review of the substance of the action, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state

policy or law established by the general assembly with respect to the regulatory board; and

(iv) In writing:

(a) Approve the action if the supervising official determines that it is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board;

(b) Remand the action to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(c) Veto the action if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

(c) The supervising official may not:

(1) Be licensed by, or participate in or have a financial interest in an occupation, profession, business, or trade regulated by or otherwise affected or potentially affected by, the regulatory board whose action is subject to review under this section; or

(2) Be a voting or ex officio member of the regulatory board whose action is subject to review under this section.

(d) The supervising official's duties established pursuant to this section shall be carried out in a reasonably prompt manner and in accordance with any time limitations set forth in this section.

(e) Any approval, veto, or remand pursuant to subdivision (b)(1)(C) must be accompanied by written justification for such action. No rule subject to this section may be filed by a regulatory board with the secretary of state pursuant to § 4-5-207 or § 4-5-208, without being approved pursuant to this section.

(f) If, within ten (10) business days of the date an action is taken, the supervising official provides notice to the chair of the regulatory board that the action is subject to further review pursuant to subdivision (b)(2)(B), the action shall take effect upon the supervising official's approval but shall not take effect if the supervising official vetoes or remands the action.

(g) The supervising official's approval, veto, or remand of a regulatory board's action pursuant to subdivision (b)(2)(B)(iv) must include written justification for the decision and shall constitute the regulatory board's action with respect to that matter.

(h) A regulatory board shall provide to the supervising official adequate notice of its meetings.

(i) The supervising official must provide written notice to the chairs of the government operations committees of the senate and house of representatives of any veto of a rule or action pursuant to this section within three (3) business days of the date of the veto. The government operations committees of the senate and house of representatives are authorized to conduct a hearing regarding the vetoed rule or action at a subsequent, regularly scheduled meeting and may request the supervising official and a regulatory board representative to appear at the hearing. The government operations committees may meet jointly or separately. Nothing contained in this section shall be construed to authorize the government operations committees to delay or overturn the supervising official's veto.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.